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July 17, 2018

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**VIA ELECTRONIC FILING**

Hon. Vince Chhabria  
United States District Court for the  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

RE: *In re Facebook, Inc., Consumer Privacy User Profile Litigation*  
*MDL No. 2843 VC*

Your Honor:

I respectfully submit this letter in response to the Court's Pretrial Order No. 3 requesting a description of my proposed core team of lawyers and a list of cases from this District where I served as lead Plaintiffs' counsel.

**Core Team of Lawyers**

Lieff, Cabraser, Heimann & Bernstein, LLP ("LCHB") (www.lchb.com) is a seventy-lawyer law firm headquartered in San Francisco. LCHB has great breadth and depth of experience, including within the two practice groups that I chair, Consumer Protection and Cybersecurity and Data Privacy. In 2017, Law360 named LCHB's Privacy practice a "Practice Group of the Year" for 2016. In addition to myself (see Dkt. No. 48), the following attorneys who have worked with me for years on consumer and privacy protection cases will form the core team of attorneys from LCHB:

▪ **Nicholas Diamand**

Nicholas Diamand is a partner and member of the firm's Cybersecurity and Data Privacy, Consumer Protection, and Securities Fraud practice groups. Mr. Diamand graduated from Columbia Law School in 2002, with an LLM degree as a Stone Scholar. He clerked for Edward R. Korman, the then-Chief Judge of the U.S. District Court, Eastern District of New York. Mr. Diamand has been practicing law for almost twenty years, including as a solicitor in England (where he remains licensed), and at LCHB since 2003. Privacy cases in which Mr. Diamand has played a principal role include *In re Anthem Inc. Data Breach Litigation*, MDL No. 2617 (N.D. Cal.) (\$115 million settlement pending); *Perkins v. LinkedIn Corp.*, No. 5:13-cv-4303 (N.D. Cal.) (privacy class action settlement); *Campbell v. Facebook, Inc.*, No. 5:13-cv-5996 (N.D. Cal.) (privacy class action settlement); *Henson v. Turn, Inc.*, No. 4:15-cv-1497 (N.D. Cal.) (data privacy litigation involving software tracking beacons); and *McDonald v. Kiloo ApS*, No. 3:17-cv-4344-JD (N.D. Cal.) (lead case) (data privacy cases related to monetization of children's personal information). In these and other actions, Mr. Diamand has managed complex litigation and multi-firm document review, deposed forensic experts, drafted and argued successful motions, and negotiated significant settlements. In January 2017, Mr. Diamand was appointed to the Advisory Council of The Center for Democracy & Technology and, between 2016 and 2018, he was the Chair of the Consumer Privacy/Data Breach Litigation Group of the American Association for Justice.

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▪ **Nimish R. Desai**

Nimish R. Desai is a partner at LCHB, and has been with the firm for eleven years as a member of the firm's Cybersecurity and Data Privacy, Defective Products, and Fraud on the Government practice groups. Mr. Desai graduated from the University of California, Berkeley, School of Law in 2006. At LCHB, Mr. Desai has litigated numerous complex cases, including *Henson v. Turn, Inc.*, No. 4:15-CV-1497 (N.D. Cal.) (data privacy litigation involving software tracking beacons); and *California ex rel. Rockville Recovery Associates v. Sutter Health, et al.* (Sacramento Sup. Ct. 2013) (hospital billing fraud matter resulting in \$46 million settlement). Mr. Desai has also worked on high-profile product defect class action cases and MDLs. Mr. Desai has been named a "Super Lawyer for Northern California" every year since 2013, was selected as one of "The Best Lawyers in America in field of Qui Tam Law (2016-2017)," and was a "Consumer Attorney of the Year Finalist" for his work on the *Sutter* litigation.

▪ **David Rudolph**

David Rudolph is a partner at LCHB, and has been with the firm for six years as a member of the firm's Cybersecurity and Data Privacy and Antitrust and Intellectual Property Practice groups. Mr. Rudolph graduated from University of California, Berkeley, School of Law in 2004. From 2007 to 2008 he was a law clerk for the Honorable Sandra Brown Armstrong, United States District Court for the Northern District of California. Prior to joining LCHB, Mr. Rudolph worked as an associate at Quinn Emmanuel Urquhart & Sullivan, LLP. Mr. Rudolph has extensive experience litigating core technical issues in privacy cases, including *In re Anthem, Inc. Data Breach Litigation*, MDL No. 2617 (N.D. Cal.), in which he worked on key technical expert issues related to the adequacy of Anthem's cybersecurity, and *Campbell v. Facebook, Inc.*, No. 5:13-cv-5996 (N.D. Cal.), in which he led the team's extensive review and analysis of Facebook's source code. In 2017, Mr. Rudolph was awarded "Outstanding Private Practice Antitrust Achievement" by the American Antitrust Institute.

▪ **Melissa Gardner**

Melissa Gardner is an associate at LCHB, and has been with the firm for five years as a member of the firm's Cybersecurity and Data Privacy, Consumer Protection, and Mass Tort practice groups. Ms. Gardner graduated from Harvard Law School in 2011. Ms. Gardner has extensive experience litigating complex digital privacy cases, including in *In re Google Inc. Street View Electronic Communications Litigation*, No. 3:10-md-21784-CRB (N.D. Cal.); *Matera v. Google Inc.*, No. 5:15-cv-4062 (N.D. Cal.); *In re Anthem Inc. Data Breach Litigation*, MDL No. 2617 (N.D. Cal.); *Campbell v. Facebook, Inc.*, No. 5:13-cv-5996 (N.D. Cal.); and *Perkins v. LinkedIn Corp.*, No. 5:13-cv-4303 (N.D. Cal.). Ms. Gardner has also represented plaintiffs in consumer protection cases and mass tort MDL proceedings. Ms. Gardner was named a "Rising Star for Northern California" in 2017.

▪ **Facundo Bouzat**

Facundo Bouzat is an associate at LCHB and has been with the firm for one year as a member of the firm's Cybersecurity and Data Privacy and Consumer Protection practice groups. Mr. Bouzat graduated from the University of Michigan Law School in 2017 and joined LCHB the same year. At LCHB, he has worked on various of the firm's digital privacy cases, including *McDonald v. Kiloo ApS*, No. 3:17-cv-4344-JD (N.D. Cal.) (lead case); *Henson v. Turn, Inc.*, No. 4:15-cv-1497 (N.D. Cal.); *In re Google Inc. Street View Electronic Communications Litigation*, No. 3:10-md-21784-CRB (N.D. Cal.).

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▪ **Abbye R. Klamann**

Abbye R. Klamann is an associate at LCHB and a member of the Cybersecurity and Data Privacy and Antitrust and Intellectual Property practice groups. Ms. Klamann graduated from the University of Michigan Law School in 2016 and joined LCHB the same year. Ms. Klamann has worked in the area of digital privacy in three related child privacy cases, of which the lead is *McDonald v. Kiloo ApS*, No. 3:17-cv-4344-JD (N.D. Cal.) (lead case). She also participates in the evaluation and development of securities and financial fraud litigation matters.

▪ **Sean Petterson**

Sean Petterson is an associate at LCHB and member of the firm's Cybersecurity and Data Privacy and Securities Fraud practice groups. Mr. Petterson graduated from New York University School of Law in 2015 and joined LCHB in 2018. At LCHB, Mr. Petterson has worked on consumer cases enforcing the Telephone Consumer Protection Act and consumer protection matters. Prior to joining LCHB, Mr. Petterson worked as a litigation associate at Boies Schiller Flexner on matters involving complex commercial disputes, white-collar investigations, and employment law.

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LCHB filed *Beiner v. Facebook* with its co-counsel, the Little Rock, Arkansas law firm of Carney Bates & Pulliam, PLLC ("CBP") with whom it has worked collaboratively on other data privacy cases. See Dkt. No. 17 (letter from Hank Bates re Lead Counsel Application). Subject to the Court's approval, LCHB's team would work alongside CBP in this case, as we believe that the class would benefit from CPB's experience as well.

▪ **Hank Bates**

Hank Bates is the founder of Carney Bates & Pulliam ("CBP"), a firm that specializes in complex class action litigation, and co-counsel in the transferred case of *Beiner v. Facebook, Inc.*, No. 18-cv-1953 (N.D. Cal.). Mr. Bates has 25 years of litigation experience. Mr. Bates graduated from Vanderbilt University School of Law in 1992. Following law school, he was a law clerk for the Honorable Danny J. Boggs, United States Court of Appeals for the Sixth Circuit, and practiced public-interest environmental law in San Francisco, California from 1993 to 1997, first with the law firm of Shute, Mihaly & Weinberger and then with Earthjustice. At CBP, Mr. Bates has focused his practice on class action litigation and developed expertise in the field of data privacy and security. Privacy cases on which Mr. Bates has played a leadership role as co-counsel with LCHB include *Ebarle v. LifeLock, Inc.*, No. 15-00258 (N.D. Cal.); *Matera, et al. v. Google, Inc.*, No. 15-4062 (N.D. Cal.); *Campbell v. Facebook, Inc.*, No. 13-05996 (N.D. Cal.); *McDonald v. Kiloo APS*, 17-4344 (N.D. Cal.); and *Henson v. Turn, Inc.*, No. 15-1497 (N.D. Cal.).

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LCHB has also retained the following bankruptcy co-counsel to assist in this matter, with whom the firm has a long standing collaboration in MDL practice:

▪ **Sander L. Esserman**

Sander L. Esserman has been the President of Stutzman, Bromberg, Esserman & Plifka for 21 years. Mr. Esserman has experience in financial reorganizations and disputes, including as lead counsel to debtors, secured creditors, trustees, indenture trustees and various creditors' committees. Mr. Esserman graduated from Southern Methodist University School of Law in 1976. From 1976-1977, he was a law clerk for the Honorable Nauman S. Scott, the Chief Judge for the United States District Court for the Western District of Louisiana. Additionally, Mr. Esserman has

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published numerous articles in the debtor-creditor area and was previously a Chairman of the ABA Business Bankruptcy Section Subcommittee of Mass Tort and Environmental Claims.

**Cases in the Northern District of California Cases Where I have Served as Plaintiffs' Lead or Co-Lead Counsel**

I have not personally received an appointment as "lead" or "co-lead" plaintiffs' counsel in any multidistrict litigation pending in this District (though I have received appointments to plaintiffs' executive or steering committees in such cases). However, I have served as court-appointed plaintiffs' class counsel in several matters in this District where there was no formal structure of counsel, and in that way have served as a lead plaintiffs' counsel. Set forth below are a description of these cases:

- **Co-Lead Class Counsel**—*Campbell v. Facebook, Inc.*, No. 13-5996, Hon. Phyllis J. Hamilton (N.D. Cal.). Nationwide class action alleging that Facebook intercepted data in users' personal and private messages on the social network and profited by sharing the information with third parties. Achieved injunctive relief to improve Facebook's consumer-facing disclosures, and cessation of the challenged practices.
- **Co-Lead Class Counsel**—*Perkins v. LinkedIn Corporation*, No. 13-04303, Hon. Lucy H. Koh (N.D. Cal.). Nationwide class action alleging that LinkedIn used its members' names and likenesses without their consent to advertise and endorse the social network. Achieved \$13 million settlement and injunctive relief targeting LinkedIn's disclosures and functionality.
- **Co-Lead Class Counsel**—*Ebarle v. LifeLock Inc.*, No. 15-258, Hon. Haywood Gilliam Jr. (N.D. Cal.). Nationwide class action alleging that, contrary to representations, LifeLock failed to protect the personal information of its subscribers. Achieved \$68 million settlement.
- **Co-Lead Class Counsel**—*Matera v. Google LLC*, No. 15-4062, Hon. Lucy H. Koh (N.D. Cal.). Nationwide class action alleging that Google improperly intercepted contents of email messages belonging to non-Gmail users. Achieved injunctive relief requiring cessation of the challenged practices.
- **Co-Lead Class Counsel**—*Gutierrez v. Wells Fargo Bank, N.A.*, No. 07-5923, Hon. William Alsup (N.D. Cal.). Nationwide class action alleging unfair practices and false representations by Wells Fargo in connection with imposition of overdraft charges. Achieved \$203 million class judgment following class action trial. I successfully argued two appeals in the Ninth Circuit defending the judgment.
- **Co-Lead Class Counsel**—*In re Tracfone Unlimited Service Plan Litigation*, No. 13-03440, Hon. Edward M. Chen (N.D. Cal.). Nationwide class action alleging that TracFone falsely advertised data available to customers of its cell phone plans. Achieved \$40 million settlement.
- **Co-Lead Class Counsel**—*Brazil v. Dell Inc.*, No. 07-01700, Hon. Ronald M. Whyte (N.D. Cal.). Class action alleging false reference price advertising in connection with Dell's online sale of computers. Achieved claims-made settlement (\$50 per claimant) and injunctive relief to change Dell's advertising methodology.
- **Lead Class Counsel**—*In re Apple and AT&T iPad Unlimited Data Plan Litigation*, No. 10-02553, Ronald M. Whyte (N.D. Cal.). Class action alleging that defendants falsely advertised access to an unlimited data plan for the iPad device. Achieved claims-made settlement (\$40 per claimant) and injunctive relief requiring AT&T to offer data plan to eligible class members.

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- **Executive Committee (Chair)**—*In re Intuit Data Litigation*, No. 15-1778, Hon. Edward J. Davila (N.D. Cal.). Active nationwide class action alleging that Intuit's policies and security measures enabled and encouraged tax refund fraud.
- **Lead Counsel**—*Arendas v. Citibank Inc. et al.*, No. 11-6462, Hon. Charles R. Breyer (N.D. Cal.). Class action on behalf of Citibank customers who were charged an Overdraft fee.
- **Lead Counsel**—*Arevalo v. Bank of America Corp.*, No. 10-4959, Hon. Thelton E. Henderson (N.D. Cal.). Class action alleging that Bank of America fraudulently sold credit card products without disclosing their benefits and charged consumers for the products month-in and month-out.
- **Lead Counsel**—*Foothill/DeAnza Community College District v. Northwest Pipe Company*, No. 00-20749, Hon. Jeremy Fogel (N.D. Cal.). Class action against manufacturers of pipes that caused damage to school building. Achieved creation of settlement fund of up to \$14.5 million for property owners nationwide with Poz-Lok pipes.
- **Interim Class Counsel**—*In re Nat'l Sec. Ag. Telecomm. Records Litig.*, MDL No. 06-1791, Hon. Vaughn R. Walker (N.D. Cal.). Appointed for subclass of telecommunications subscribers in litigation alleging warrantless surveillance program by NSA in violation of the U.S. Constitution; litigation terminated in 2008 by amendments to the Foreign Intelligence Surveillance Act that established "retroactive immunity."
- **Executive Committee/Liaison Counsel**—*In re Chase Bank USA, N.A. "Check Loan" Contract Litigation*, MDL No. 2032, Hon. Maxine Chesney (N.D. Cal.). LCHB appointed as Liaison Counsel with Elizabeth Cabraser appointed to Executive Committee (no lead counsel appointed). Nationwide multidistrict class action alleging that Chase breached its good faith obligation to credit card holders by modifying the terms of their long-term fixed rate loans. Achieved \$100 million settlement.
- **Class Counsel**—*James v. UMG Recordings*, No. 11-1613, Hon. Susan Illston (N.D. Cal.). Class action against Universal Music Group alleging that Universal failed to pay the recording artists full royalty income earned from customers' purchases of digitally downloaded music. Achieved settlement of \$11.5 million and perpetual increase of 10% in future royalties paid or credited to them.
- **Co-Lead Counsel**—*Winig v. Cingular Wireless, LLC*, No. 06-4297 (N.D. Cal.), Hon. Maxine M. Chesney. Class action alleging breach of contract and unlawful business practices in connection with change in policies for billing wireless subscribers. Case terminated in summary judgment.
- **Co-Lead Counsel**—*Williamson v. McAfee, Inc.*, No. 14-00158 (N.D. Cal.), Hon. Edward J. Davila. Nationwide class action alleging that McAfee falsely represents the prices of its computer anti-virus software to customers enrolled in its "auto-renewal" program. Achieved injunctive relief and \$11.50 certificate provided to each class member with no requirement to submit claim (with option to claim instead as cash), valued at more than \$80 million.

Respectfully,



Michael W. Sobol

**Lieff Cabraser Heimann & Bernstein, LLP**